

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD S. SHEPARD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO

*Docket No. 00-2526; Submitted on the Record;
Issued July 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained an emotional or a cardiac condition causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On May 20, 1994 appellant, then a 50-year-old police officer, filed a notice of occupational disease alleging that he was under stress at work which caused or aggravated his cardiac condition.

The record reflects that appellant has a history of coronary artery disease with a triple-bypass surgery in January 1993. He has also been diagnosed with chronic obstructive disease and high cholesterol. Since his surgery in January 1993, appellant has been treated for recurring chest pain and major depressive disorder with anxiety.

In an attending physician's report dated May 19, 1994, Dr. Edward Lynch diagnosed stress syndrome, coronary artery disease osteoarthritis and two myocardial infarctions. He checked a box indicating that the diagnosed condition was caused or aggravated by appellant's employment. The date of injury was listed as January 10, 1993.

The Office referred appellant for a psychological evaluation with Dr. Cheryl L. Terrell on October 6, 1997. In a report dated October 15, 1997, Dr. Terrell noted a statement of accepted facts prepared by the Office and discussed appellant's work, social and medical histories. She noted that it was difficult to determine whether appellant's first heart attack was due to heredity or job stress, but noted that stress and depression do make individuals physically ill. Dr. Terrell opined that appellant was experiencing a significant amount of stress and depression due to medical problems and "job stressors before and during the time that he developed heart problems."

In a September 16, 1994 decision, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

Appellant disagreed with the decision and requested a hearing, which was held on August 1, 1996. In a decision dated May 8, 1997, an Office hearing representative vacated the Office's September 16, 1994 decision insofar it was determined that appellant had alleged two compensable factors of employment with respect to his emotional condition: (1) appellant was assaulted on May 11, 1986, March 6, 1988 and March 31, 1994 by combative patients while in the performance of duty and that he was often exposed to physically dangerous situations while dealing with patients which caused him stress; and (2) appellant was required to work four different shifts as a part of his regularly assigned duties which he found to be stressful. The Office hearing representative remanded the case for further development of the medical evidence.

The Office arranged for a second opinion evaluation to be performed by Dr. Jerry Wessel, a Board-certified psychiatrist. In a November 21, 1997 report, Dr. Wessel described appellant's work, social and medical histories. He diagnosed that appellant suffered from major depression and opined that appellant was totally disabled from work. Dr. Wessel, however, did not address the issue of causal relationship.

On December 16, 1997 the Office wrote to Dr. Wessel and asked him to provide a supplemental opinion addressing whether appellant's emotional condition was causally related to work factors.

In a February 10, 1998 report, Dr. Wessel stated that he believed appellant's depression was related to his coronary disease. He also noted that appellant's working conditions were difficult. Dr. Wessel concluded: "It was of a highly stressed situation and it does appear that he had his first heart attack in 1990 and it was related to his difficulty in stressful working conditions."

In a March 25, 1998 decision, the Office denied compensation on the grounds that appellant failed to establish a causal relationship between his alleged emotional condition or cardiac condition and factors of his employment.

In a decision dated December 2, 1998, an Office hearing representative determined that the opinion of the Office referral physician was insufficiently reasoned to resolve the issue of causation. Accordingly, the Office's March 25, 1998 decision was vacated. The Office hearing representative directed the Office on remand to schedule an examination with a Board-certified cardiac specialist and an examination with a Board-certified psychiatrist in order to resolve the relevant causation issues concerning appellant's diagnosed heart condition and his emotional condition.

In an August 4, 1999 decision, the Office found that the weight of the medical evidence failed to establish that appellant's cardiac and emotional condition were causally related to employment factors and therefore denied the claim for compensation.

In a decision dated January 18, 2000, an Office hearing representative affirmed the Office's August 4, 1999 decision.

On March 15, 2000 appellant requested a review of the written record.

In a decision dated June 28, 2000, the Office denied appellant's request for a hearing, noting that he had already received a review of the written record.

The Board finds that appellant failed to establish that his emotional or cardiac condition is causally related to factors of his federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.¹

Appellant seeks compensation for an emotional condition based on stress at work. He states that he was under stress at work and was in fear of losing his job after he reported an individual for stealing federal property. Appellant alleges that he was harassed by his supervisor, citing to the fact that he was denied leave and issued several reprimands for trivial actions.

Although appellant reported that he was denied leave on numerous occasions, he did not show any error or abuse by the employing establishment in the handling of this administrative matter. The Board has determined on a number of occasions that "allegation's pertaining to leave denials relate to administrative or personnel matters unrelated to the employee's regular or specifically assigned work duties and do not fall within the coverage of the Act absent evidence of error or abuse."² Similarly, job insecurity, including fear of loss of salary, is not a compensable factor of employment where there is no evidence that the employing establishment acted in error or abusively in handling the personnel matter.³ There is no such evidence of error or abuse in this case.

Appellant contends that his emotional condition is due in part to the failure of the employing establishment to appropriately respond to its own procedures for medical emergencies when he suffered a heart attack at work. The record, however, indicates that the personnel on duty when appellant suffered his heart attack at work acted reasonably in calling for emergency assistance once it was determined that such assistance was required.⁴ Appellant's self-generated perception of mistreatment is not compensable.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Dinna M. Ramirez*, 48 ECAB 308 (1997); *Beverly Diffin*, 48 ECAB 125 (1996).

³ *Ronald C. Hand*, 49 ECAB 113 (1997).

⁴ In determining whether an employing establishment erred or acted abusively, the Board examines whether the employing establishment acted reasonably. *See Id.*

There is also no factual support for appellant's allegations of racial discrimination. Appellant has stated that he filed and won a suit with the Equal Employment Opportunity Commission (EEOC) for racial discrimination, citing an instance where he was told by his supervisor that he would not succeed in working in New Orleans because he was black. Appellant, however, did not support his contention with a copy of the actual decision. The record also indicates that, while appellant filed an Equal Employment Opportunity (EEO) complaint, the complaint was later withdrawn upon agreement of the parties. In the absence of a credible witness or EEO decision to substantiate that he was the victim of racial discrimination, the Board must find that he failed to allege a compensable factor of employment.

In support of his emotional condition claim, appellant further states that the employing establishment fired him and then had to have him reinstated at the direction of the Merit Systems Protection Board (MSPB). However, the mere fact that personnel actions are later modified or rescinded does not in and of itself, establish error or abuse on the part of the employing establishment.⁵ The Board notes that there is no decision from the MSPB to corroborate appellant's statements regarding his reassignment.

The Board has duly reviewed the record and finds no factual support for appellant's contention that there was a high rate of turnover in his department due to poor management.

Likewise there is no factual evidence to support the following allegations or incidents: (1) that appellant tried to resolve his difficulties with his supervisor, but his supervisor would not engage in any discussions; or (2) that the employing establishment failed to provide him with copies of evidence used to remove him from the service.

Appellant, however, has established that he was assaulted at work by patients while trying to carry out his regularly assigned duties. He has also established that he was required to work four different shifts in the course of his job and that his stressful work schedule was part of his regular assigned duties. Accordingly, the Board concludes that these two incidents occurred in the performance of duty and are compensable factors of employment.⁶

Appellant's burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Act. To establish his occupational disease claim for either his emotional condition or his cardiac condition, appellant must also submit rationalized medical evidence establishing a causal relationship between his diagnosed emotional or heart condition and the accepted compensable employment factors.⁷

With respect to the medical evidence, the Board finds that appellant failed to establish that his cardiac condition or that his emotional condition was caused or aggravated by the compensable work factors.

⁵ *Mary L. Brooks*, 46 ECAB 266 (1994).

⁶ Emotional reactions to situations, in which an employee is trying to meet his or her position requirements, when supported by sufficient evidence, are compensable. *Richard H. Ruth*, 49 ECAB 503 (1998).

⁷ *Elizabeth W. Exnil*, 46 ECAB 606 (1995).

The Office referred appellant for a second opinion evaluation with Dr. Daniel B. Bauwens, Board-certified in cardiovascular disease, on February 19, 1999. Dr. Bauwens performed a physical examination, reviewed appellant's medical records and a statement of accepted facts. He diagnosed coronary artery disease, mitral regurgitation by history and possible congestive heart failure. Dr. Bauwens stated:

“[Appellant] currently suffers from congestive cardiomyopathy and chronotropic incompetence which was aggravated by his employment with the Veterans Administration as provided in the statement of accepted facts. The level of stress and physical activity required for him to perform his job can easily have a deleterious effect on this underlying condition. We are told that he had no cardiomegaly in February 1990. An echocardiogram in May 1995, was said to show mild cardiomegaly. The current echocardiogram would have to be classified as moderate cardiomegaly. It is clear that there has been a progression of this process. While his employment did not cause the problem, it, in all likelihood, accelerated its deterioration. His current symptoms which he finds most disabling are not those of his coronary artery disease but rather those of his cardiomyopathy and its associated chronotropic incompetence.... I do not believe that his federal employment has caused an exacerbation of his underlying coronary artery disease. He has had thallium examinations that have been negative, although suboptimal, and his current complaints are not those of someone with stable or unstable angina, but rather those of someone who has significant congestive heart failure.”

The report of Dr. Bauwens was reviewed by the district medical director, who stated that Dr. Bauwens needed to provide the office with medical rationale addressing the relationship between claimant's physical activity and job stress, and his underlying coronary artery disease and cardiomyopathy.

Dr. Bauwens submitted a supplemental report dated March 30, 1999. He reiterated that appellant had mild left ventricular dysfunction on cardiac catheterization in February 1990 and that he was in the early stages of cognitive cardiomyopathy. Dr. Bauwens opined that appellant's cardiac condition was aggravated by physical and emotional stress at work insofar as there was an activation of the adrenergic nervous system in the setting of left ventricular dysfunction. He noted that, in appellant's case, an increase in heart contractions and heart rate causes an increase in myocardial oxygen consumption which in turn caused further damage to the left ventricle over a period of time. Dr. Bauwens stated as follows:

“The physical and emotional stress causes an increase in circulating catecholamines. This occurs to a variable extent in different individuals. In addition to the baseline increase in adrenergic activity which would result from left ventricular dysfunction, the additional catecholamine outflow that occurs with physical exertion (particularly isometric exertion) and emotional stress would only accelerate this process.

“In addition, this increase in circulating catecholamines caused by the underlying left ventricular dysfunction and exacerbated by physical and emotional

stress causes accelerated atherogenesis. The mechanisms by which this occurs are multiple. The increased contractility associated with increased adrenergic outflow causes hemodynamic stress on the endothelium. This, in turn, results in endothelial dysfunction, and the accumulation of monocytes and lymphocytes in the arterial wall. In addition, low density lipoprotein is increased. With the increased concentration of LDL, there is more oxidized LDL available within the arterial wall to be taken up by monocytes and macrophages to form foam cells. In addition, the HDL decreases, further increasing the risk of accelerated atherosclerosis. Finally, increased circulating catecholamines tend to activate platelets which promote thrombosis and increase the acceleration of atherogenesis as well as increased possibility of abrupt myocardial event such as a myocardial infarction.

“As previously stated, while it is unlikely that his employment caused these pathophysiologic processes, the requirements of his employment were perfectly capable of accelerating them.”

The Office sent Dr. Bauwens’ supplemental report to an Office medical adviser who opined in a report dated April 22, 1999 that Dr. Bauwens’ rationale as to the issue of causation was speculative as to the role of stress on heart disease. He recommended that Dr. Bauwens’ opinion not be accepted as sufficiently reasoned to support a causal relationship between appellant’s cardiomyopathy and his work factors.

The Office subsequently sent appellant for an examination with Dr. Robert Ferrara, a Board-certified cardiologist, on May 17, 1999. In a report dated July 26, 1999, Dr. Ferrara outlined appellant’s medical history and family history. He noted that appellant’s cardiac history dated back to February 1990 when he was hospitalized for symptoms consistent with angina and subsequently underwent an angioplasty of the left anterior descending artery. Dr. Ferrara noted that appellant was also hospitalized in January 1993 for myocardial infarctions with coronary artery bypass surgery performed at that time.

Dr. Ferrara discussed appellant’s symptoms and performed a physical examination. He opined that appellant’s major risk factors for his heart condition was smoking and high cholesterol. Dr. Ferrara reviewed the results of an echocardiogram and an eckocardiogram. The diagnoses listed under “Impression” were as follows: (1) coronary artery disease manifested by two myocardial infarctions; (2) hypercholesterolemia; (3) diabetes mellitus; (4) hypertension; (5) symptoms of dyspnea on exertion and dizziness after exertion, most likely related to left ventricular dysfunction and decreased heart rate response to exercise.

In answer to causation questions posed by the Office with respect to stress and the development of appellant’s cardiac condition, Dr. Ferrara stated as follows:

“I do feel that the exposure to factors of [f]ederal employment would intermittently cause symptoms, but only because of the established underlying heart disease that had developed over the years, and not because factors of federal employment caused or worsened the underlying coronary artery disease. It is my opinion that it is very difficult to prove that the stress associated with a person’s

life, whether it be job related, family related or other is a contribution in any way to the progression of coronary disease the worsening of heart muscle function.”

Dr. Ferrara specifically stated that appellant would have had the same degree of coronary artery disease and left ventricular dysfunction whether or not he had been exposed to stressful work factors. He stated that stress at work caused neither a temporary or permanent aggravation of appellant’s heart disease. Dr. Ferrara concluded that appellant was totally disabled from work due to his heart condition.

On March 18, 1999 appellant underwent a psychiatric evaluation performed by Dr. Wayne A. Stillings, a Board certified psychiatrist and neurologist, who reviewed the medical record and interviewed him. Dr. Stillings opined that appellant suffered from a preexisting personality disorder that was neither caused nor aggravated by conditions of his employment. He noted that appellant met the DSM-IV diagnostic criteria for a mood disorder and that appellant exhibited signs of depression following the onset of his cardiac problems. Dr. Stillings indicated that appellant’s physical problems gave him emotional stress. He opined that appellant’s mood disorder was not causally related to, nor aggravated by the conditions of his previous employment. Dr. Stillings noted that appellant’s mental state did not show improvement after he left work, which would have been expected if the employment was an aggravating factor in his mood disorder. He concluded that appellant’s mood disorder was due to an emotional reaction to his cardiac status, which continued after he ceased his employment. Dr. Stillings opined that appellant’s preexisting psychiatric disorder and mood disorder were related to his general medical condition and that this emotional condition was not the result of conditions of his employment. He suggested that appellant was exaggerating his symptoms for secondary gain and that from a psychiatric standpoint, appellant was capable of returning to his regular job.

The second opinion specialists have concluded that there is no causal relationship between appellant’s diagnosed heart condition or his emotional disorder and the compensable factors identified by the Office and the Board in this decision. Although appellant established that he was under stress having to perform his job duties. Dr. Ferrara found that work stress factors did not cause or aggravate appellant’s preexisting coronary artery disease. Dr. Stillings has also opined that appellant’s mood disorder was caused by concern over his health problems and was not causally related to work factors. In the absence of reasoned medical evidence to dispute the findings of these physicians or to otherwise aid appellant in carrying her burden of proof to establish causal relationship, the Board concludes that the Office properly denied compensation.

The Board also finds that the Office properly denied appellant’s request for a review of the written record. After the issuance of the Office hearing representative’s January 18, 2000 decision, appellant’s appeal rights were limited to requesting reconsideration by the Office under section 8128⁸ or filing an appeal with the Board. Because appellant had already received a review of the written record by an Office hearing representative, he was not entitled to a second review before the Branch of Hearings and Review as a matter of right. In exercising its

⁸ 5 U.S.C. § 8128.

discretion, the Office properly determined that the case could equally well be addressed through the reconsideration process.

The record reflects that the Office properly notified appellant of his limited appeal rights following the January 18, 2000 decision and at that time there was no final decision of the Office left unreviewed over which the Branch of Hearings and Review could assume jurisdiction. Thus, the Office properly apprised appellant that he was not entitled to a second review of the written record.⁹

The decisions of the Office of Workers' Compensation Programs dated June 28, 2000 and August 4, 1999 are hereby affirmed.

Dated, Washington, DC
July 11, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See generally, *Eileen A. Nelson*, 46 ECAB 377 (1994).